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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.D. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Y.D. et al.,

Defendants and Appellants.

D074557

(Super. Ct. No. NJ15270AB)

APPEALS from a judgment of the Superior Court of San Diego County, Michael Imhoff, Commissioner. Affirmed.

Serobian Law and Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant Y.D.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant I.C.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

Y.D. (Father) appeals the juvenile court's judgment terminating his parental rights over his daughters A.D. and Valerie D. (together, the girls) under Welfare and Institutions Code section 366.26.¹ He argues the court erred in finding the beneficial relationship exception to termination of parental rights did not apply to him (§ 366.26, subd. (c)(1)(B)(i)).² We conclude the court did not err and accordingly affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Father has a history of mental illness; he has suffered from depression, anxiety, insomnia, suicidal ideation, and psychosis. In 2014, he and Mother began a relationship characterized by intense domestic violence. In one incident, he threatened Mother's life with a knife and was placed in a psychiatric hospital. They lived together in a home with Father's parents.

In September 2014, Mother prematurely gave birth to A.D. at 29 weeks; the infant had to remain in the neonatal intensive care unit for two months. A.D. went on to suffer

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

² I.C. (Mother) appeals from the same judgment, joining in Father's arguments. She makes no separate claim of error, asserting only that if we reverse the judgment terminating Father's parental rights, the judgment terminating her parental rights must be reversed as well. (See, e.g., *In re Mary G.* (2007) 151 Cal.App.4th 184, 208.)

various developmental delays, for which her parents failed to seek proper treatment. To prevent being hit by Father, Mother would sometimes hold A.D. as a shield.

In February 2016, Mother gave birth to Valerie, who weighed less than four pounds and had to remain in the neonatal intensive care unit for six days. The parents took Valerie to one doctor appointment shortly after she was released from the hospital, and then failed to take her to any further wellness checks. Mother was the girls' primary caretaker.

In approximately July 2016, Father and Mother ended their relationship, and Mother moved out. She took the girls to live at the maternal grandmother's home for two months and then in September, to the home of her then-boyfriend, Luis A.

In November 2016, the San Diego County Health and Human Services Agency (Agency) received a report that the girls were severely neglected, malnourished, and living in squalid conditions. During a welfare check, police officers and a social worker observed a hazardous living situation. Luis's home contained no edible food, baby formula, electricity, or hot water. The girls were exposed to the elements, minimally clothed, and visibly ill. Nine-month-old Valerie appeared to be the size and possess the developmental abilities of a four-month-old baby; she was also in "respiratory distress." Although Father did not live with the girls, he was aware of their living conditions and had done nothing to intervene.

The Agency filed juvenile dependency petitions on behalf of the girls based on parental neglect (§ 300, subd. (b)), and the juvenile court ordered the girls detained out of home. On November 30, 2016 and December 4, 2016, respectively, A.D. and Valerie

were placed together in the home of foster parents, where they have resided ever since. The foster parents intend to adopt the girls.

At the jurisdictional and dispositional hearing, the court made true findings on the petitions, declared the girls to be dependents of the court, and ordered the parents to be provided with reunification services.

At the six-month review hearing, the court continued the girls as dependents of the court, terminated Mother's reunification services, and directed that Father be provided with another six months of reunification services. According to the Agency's reports, Father was participating in his case plan services during the reporting period, including parenting classes and therapy for his depression and anxiety. Father worked two or three jobs at a time and lived in his aunt's home; he acknowledged his feelings of stress as a single parent. He often did not know what to feed the girls or when to change their diapers, but he was open to feedback. Father had two supervised, generally positive visits with the girls every week.

After a few months, Father began having unsupervised visits with the girls (ages three and one) for one to two hours at a park on each occasion. He was visibly stressed during these visits because it was difficult for Father to care for both girls together. In one incident, A.D. suffered a lip laceration and was bleeding from her lip, and Father did not see how it happened. Nonetheless, he was eager to expand his unsupervised visits.

In December 2017, Father, his aunt, the foster mother, and the Agency agreed to a new schedule of unsupervised visits in which Father would care for the girls on at least two days a week for six or eight hours each day (day-long visits). The new visitation

schedule was intended to prepare Father for taking on a greater role in the girls' lives. But before the new schedule could even take effect, Father reported he was not ready or prepared for the visits. He encountered transportation and other issues, and he canceled many scheduled visits. When a few visits finally occurred, the Agency had numerous concerns. For instance, Father did not install proper car seats; did not consistently change the girls' diapers, which led to a terrible, painful diaper rash; exhibited questionable judgment in parenting; was late to visits; and largely depended on his aunt to help him care for the girls, which overburdened the aunt.

Due to all the issues arising from the day-long visits, Father's visits were reduced back to two-hour visits at the park. In talking to the Agency's social worker, Father denied seeing any diaper rash on the girls and disclosed that he relied on three-year-old A.D. to inform him of when she and her baby sister needed their diapers changed.

At the 12-month review hearing in April 2018, the juvenile court terminated reunification services for Father and scheduled a permanency planning hearing. In the Agency's assessment, Father was well-intentioned but unable to parent and care for the girls, both of whom were very young and had special needs. The court found that Father had made minimal progress on his case plan and that there was not a substantial probability the girls would be returned to his physical custody by the next review hearing.

Father missed many of the girls' medical appointments in 2018. He continued having weekly visits with the girls at the park, during which he was playful and

engaging. The girls enjoyed their visits with Father, yet separated easily from him at the end of visits and did not ask about him in between visits.

On the other hand, the girls looked to their foster parents to meet their daily living, health, developmental, and emotional needs, and were thriving in the foster parents' care. The foster parents had been the girls' primary caregivers for as long as A.D. could remember and most of Valerie's life. The foster parents have their own biological son, who had developed a sibling-like, protective relationship with the girls. The foster parents were committed to adopting the girls and legally cleared by the Agency for placement.

At the permanency planning hearing (section 366.26 hearing), the court received the Agency's reports in evidence without objection. Those reports detailed the girls' health and developmental background, history of interactions and visits with Father, and the Agency's recommendations. The Agency recommended adoption as the girls' permanent plan and assessed the girls to be specifically adoptable (by their foster parents) and generally adoptable (based on there being 85 families in San Diego County approved to adopt a sibling set matching the girls' characteristics).³ In the Agency's evaluation, the benefits of adoption outweighed any risk to the girls from severing their relationship with Father.

³ There were more identified families who would be willing to adopt children matching each of the girls' characteristics, individually.

The court also heard live testimony at the section 366.26 hearing from Father. He testified that his visits with the girls were happy and positive, though still limited to two hours at the park or mall each time. He loved the girls and believed they would be sad if they could not see him again.

After considering the evidence and arguments of counsel, the juvenile court found the girls were adoptable, terminated Father's parental rights, and selected adoption as the permanent plan. The court considered and rejected the applicability of the beneficial relationship exception to termination of parental rights. Although acknowledging a loving relationship between Father and the girls, the court found that the benefits of continuing that relationship was not substantial enough to outweigh the benefits of adoption. In balancing the benefits, the court remarked:

"[Father] has not been able to demonstrate that he fully grasps or understands the extent of the special needs of each of his girls. Both girls do recognize him as their father and, again, they have pleasant and enjoyable interactions with him. But neither of the girls express or exhibit separation anxiety at the conclusion of the visits, nor is there evidence that they inquire of their father in between visits.

"The [c]ourt . . . conclude[s] that it would not be in the best interest of either of the girls to promote or facilitate a father-child relationship and further concludes [that] whatever benefit may have been conferred upon each and both of the girls by the contact each and both have had with their father is greatly outweighed by their need for stability and placement, which can only be achieved through adoptive placement."

The parents filed timely appeals.

DISCUSSION

Father argues the court erred in finding that the beneficial relationship exception to termination of parental rights and adoption did not apply. (§ 366.26, subd. (c)(1)(B)(i).) Mother joins in Father's argument. We conclude the court did not err.

A. *Legal Standards for Termination of Parental Rights and Standard of Review*

At a permanency planning hearing, once the juvenile court finds by clear and convincing evidence that the child is likely to be adopted within a reasonable time, the court is required to terminate parental rights and select adoption as the permanent plan unless the parent shows that termination of parental rights would be detrimental to the child under one of several statutory exceptions. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) One of those exceptions is the beneficial parent-child relationship, which applies when it would be detrimental to the child to terminate parental rights in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)⁴ The burden is on the party seeking to establish the beneficial relationship exception to produce evidence establishing the requirements for the exception. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).

⁴ "Regular visitation exists where the parents visit consistently and to the extent permitted by court orders." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption." (*In re C.F.* (2011) 193 Cal.App.4th 549, 554 (*C.F.*).

Once the juvenile court finds that a parent has met his or her burden to establish the requirements of the beneficial relationship exception, the juvenile court may choose a permanent plan other than adoption if it finds the beneficial relationship to be " 'a compelling reason for determining that termination would be detrimental to the child ' " (§ 366.26, subd. (c)(1)(B); see *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parent-child relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*.)

B. *Analysis*

As we have explained, there are two elements to establishing the beneficial relationship exception, namely, (1) "regular visitation and contact" and (2) that "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The only disputed element in this case is the second. The juvenile court believed the girls shared a loving relationship with Father, but on balance the relationship could be severed. In other words, Father had not established "a compelling reason for determining that termination [of parental rights] would be detrimental to the child." (*Id.*, subd. (c)(1)(B); *C.F.*, *supra*, 193 Cal.App.4th at p. 553.)

In making the determination of whether a beneficial relationship presents a compelling reason to order an alternative to adoption, the court applies a balancing test in which it weighs "the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The juvenile court must evaluate the issue on a case-by-case basis, considering the many variables that can affect the parent-child relationship. (*Id.* at p. 576; *In re J.C.* (2014) 226 Cal.App.4th 503, 532.) Among the variables to be considered are the child's age, the amount of time the child spent in the parent's care, whether the interactions are positive or negative, and whether the child has particular needs that only the parent can satisfy. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467; see also *In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938.) It is not enough for a parent to show frequent and loving contact during pleasant visits. (*C.F.*, *supra*, 193 Cal.App.4th at p. 555.) More than incidental benefits from maintaining parental contact are required for this exception to apply. (*Id.* at pp. 558-559; *In re Helen W.* (2007) 150 Cal.App.4th 71, 79-80.)

"A juvenile court finding that the relationship is a 'compelling reason' for finding detriment to the child" is "a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption." (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) The parent seeking to establish the beneficial relationship exception must prove *not only* that it would benefit the child to continue the parental relationship, but also that continuing

the relationship would "promote[] the well-being of the child to such a degree *as to outweigh* the well-being the child would gain in a permanent home with new, adoptive parents." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.) Under the balancing test set forth in *Autumn H.*, we conclude the juvenile court acted within its discretion in finding that Father did not establish that termination of his parental rights would be detrimental to the girls.

It was undisputed the girls had a loving relationship with Father, but he was not fulfilling a parental role in their lives. (Cf. *In re E.T.* (2018) 31 Cal.App.5th 68, 77 [children had spent a significant period of time in mother's care and they were "very tied" to her].) The girls were toddlers, and they had spent little time in Father's care. In their infancy, Mother was their primary caretaker, and the girls had been exposed to domestic violence between her and Father. After Mother moved away, Father was absent from the girls' lives for months. More recently, Father was trying to be a responsible parent, but he did not possess the mental stability, sound judgment, or independence necessary to care for the girls. He could not consistently care for them for extended periods of time without endangering them or himself, and he was unable to fully grasp the protective risks. The girls enjoyed their visits with Father, but they were also sometimes neglected under his supervision (e.g., inadequate diaper changes) or held to unreasonable expectations (e.g., three-year-old A.D. expected to take care of her one-year-old sister). The girls had no problem separating from him after visits. For most of their lives, the girls have relied on their foster parents to meet all of their needs.

Further, both girls have special needs and a history of developmental delays. As a result, stability, structure, and consistency are especially important. They were maltreated during a critical time in their development and will need ongoing medical care and specialized services. Lapses in parental judgment could be particularly detrimental for these girls. The juvenile court could reasonably conclude that their needs would be best addressed by allowing them to be adopted by the foster parents.

In summary, the record fails to show that Father's relationship with the girls was so beneficial to them that it outweighed the benefit they would gain from being adopted. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.